

ANSWER CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 19-C-357

Plaintiff(s)

Judge: RAB

Glade Springs Village Property Owners Association Inc.

v.

Days to

Answer

Type of Service

Defendant(s)

EMCO Glade Springs Hospitality;
Elmer Coppoolse;
James Terry Miller; and
Elaine Butler
Street Address

City, State, Zip Code

II. TYPE OF CASE:

☒ General Civil

☐ Mass Litigation [As defined in T.C.R. 26.04(a)]

☐ Asbestos

☐ FELA Asbestos

☐ Mental Hygiene

☐ Habeas Corpus/Other Extraordinary Writ

☐ Other: _____

☐ Adoption

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

☐ Miscellaneous Civil Petition

☐ Guardianship

☐ Medical Malpractice

III. JURY DEMAND:

Yes

CASE WILL BE READY FOR TRIAL BY

/

IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?

☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities

☐ Reader or other auxiliary aid for the visually impaired

☐ Interpreter or other auxiliary aid for the deaf and hard of hearing

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Foreign language interpreter-specify language: _____

☐ Other: _____

Attorney Name: Ramonda C. Marling, Esq.

Firm: Lewis Glasser PLLC

Address 300 Summers Street, Suite 700, Charleston, WV 25301

Telephone (304) 345-2000

Representing:

☒ X Plaintiff

☐ Cross-Defendant ☐ Cross-Complainant

☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant

☐ Proceeding without an Attorney

Complaint and ?? enclosed/attached.

Dated: 8 / 14 / 2019

Signature: Ramonda C. Marling

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
a West Virginia non-profit corporation,

Plaintiff,

v.

Civil Action no. 19-C-357
The Honorable RAB

EMCO GLADE SPRINGS HOSPITALITY, LLC,
a West Virginia limited liability company;
ELMER COPPOOLSE, an individual;
JAMES TERRY MILLER, an individual; and
R. ELAINE BUTLER, an individual

Defendants.

COMPLAINT

Now comes Plaintiff Glade Springs Village Property Owners Association, Inc. ("Plaintiff" or "GSVPOA"), by and through the undersigned counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, and by way of complaint against Defendants, or each or several of them, states as follows:

Prefatory Statement

This matter centers on a common interest community¹ located in Raleigh County, West Virginia, Glade Springs Village ("GSV"). As a common interest community, GSV is governed by the Uniform Common Interest Ownership Act ("UCIOA"). *See* W. Va. Code § 36B-1-101 *et seq.* Until May 2019, Glade Springs Village Property Owners Association, Inc. ("GSVPOA") was controlled by the declarant-appointed² executive board³ ("board of directors").

¹ Under UCIOA, the phrase "common interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate" W. Va. Code § 36B-1-103(7).

² Under UCIOA, the term "declarant" is defined as "any person or group of persons acting in concern who: (i) As

Beginning in 2018, a group of GSV property owners threatened to initiate a civil action to force the declarant to hold its first open election of the board of directors independent of and free of the declarant's control. Ultimately, under threat of litigation, the declarant acquiesced and permitted the election to move forward.

The GSV property owners ousted the declarant-appointed board of directors and elected the first independent board of directors of the GSVPOA in April of this year. The Elected Board of Directors⁴ took office on May 1, 2019. Since that time, the Elected Board of Directors has determined that the Declarant Board of Directors⁵ breached their statutory fiduciary duties to the members of GSVPOA and permitted EMCO Glade Springs Hospitality, LLC ("EMCO") to breach certain contracts with the GSVPOA. As such, the Elected Board of Directors brings this civil action seeking redress against the Declarant Board of Directors and EMCO for these breaches as more fully set forth below.

Parties

1. GSVPOA is a West Virginia non-profit corporation registered to do business in West Virginia.
2. GSVPOA was formed in 2001.

part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right." W. Va. Code § 36B-1-103(12).

³ Under UCIOA, the phrase "executive board" is defined as "the body, regardless of name, designated in the declaration to act on behalf of the association." W. Va. Code § 36B-1-103(16).

⁴ This term is defined in Paragraph 70 below.

⁵ This term is defined in Paragraph 13 below.

3. GSVPOA is the statutorily mandatory association of the unit or lot⁶ owners of GSV, a common interest community located in Raleigh County, West Virginia.

4. Defendant EMCO is a limited liability company registered to do business in West Virginia.

5. Defendant Elmer Coppoolse (“Coppoolse”) is a resident of Raleigh County, West Virginia.

6. Defendant Coppoolse was a member of the Declarant Board of Directors of GSVPOA from 2010 to April 30, 2019.

7. Upon information and belief, Defendant Coppoolse is also the majority member and chief executive officer of Defendant EMCO.

8. Defendant James Terry Miller (“Miller”) is a resident of Raleigh County, West Virginia.

9. Defendant Miller was a member of the Declarant Board of Directors of GSVPOA from 2010 to April 30, 2019.

10. Defendant R. Elaine Butler (“Butler”) is a resident of Nicholas County, West Virginia.

11. Defendant Butler was a member of the Declarant Board of Directors of GSVPOA from 2010 until she retired on or about December 21, 2018.

12. Upon information and belief, Defendant Butler was also serving as the controller or chief financial officer for Defendant EMCO under the supervision and direction of Defendants EMCO and Coppoolse during her tenure as a member of the Declarant Board of Directors of

⁶ For purposes of this civil action, the terms “unit” and “lot” are interchangeable unless the context suggests otherwise. Under UCIOA, the term “unit” is defined as “a physical portion of the common interest community designated for separate ownership or occupancy” W. Va. Code § 36B-1-103(33).

GSVPOA.

13. Defendants Coppoolse, Miller and Butler are collectively referred to as the “Declarant Board of Directors” in this Complaint.

Jurisdiction and Venue

14. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the jurisdictional threshold.

15. This Court has personal jurisdiction over EMCO because EMCO is a West Virginia limited liability company registered to do business in this State and has transacted business related to GSVPOA’s claims in this State.

16. Venue is proper in this Court because a substantial part of the acts or omissions giving rise to the claims occurred in Raleigh County, West Virginia.

17. In addition, venue is proper in this Court with regard to Defendants Coppoolse and Miller because they reside in Raleigh County, West Virginia.

Background

18. GSV occupies more than 2,950 acres and contains 750 private residences and additional undeveloped lots.

19. In 2001, Cooper Land Development, Inc. (“Cooper Land”) as the declarant filed a Declaration of Covenants and Restrictions in the office of the Clerk of the County Commission of Raleigh County, West Virginia, in Deed Book 5004, at page 6485. Under the Declaration, GSV imposed restrictions, covenants, easements and conditions under a general plan of improvement for the benefit of all the property owners and to establish a method of maintenance, preservation, use and enjoyment of the lots and common elements within GSV, including the

right to impose and collect assessments against all lots secured by statutory liens with the power of foreclosure and sale.

20. Cooper Land was, for all relevant purposes of this civil action, the declarant of GSV.

21. Further, Cooper Land was *not* a “resort owner” as W. Va. Code § 36B-1-103(29) defines that term.

22. No predecessor or successor of Cooper Land in Raleigh County, West Virginia, was a resort owner.

23. Under its Bylaws, GSVPOA is governed by and acts through its board of directors.

24. In 2001, GSVPOA considered constructing two golf courses within the common area of the community, the Stonehaven Course and the Woodhaven Course. Stonehaven and Woodhaven were to have become and, in fact, did become part of GSV’s common elements, to be maintained solely by GSVPOA at the expense of its members.

25. In contemplation of the construction of these golf courses, on or about May 4, 2001, Cooper Land, Cooper Communities, Inc., Glade Springs Resort Limited Liability Company (“GSR”), The West Virginia Enterprise Center Limited Liability Company, Land Use Corporation and William T. Bright entered into a letter agreement labeled “Resort Guest Use of New GSVPOA Golf Courses” (the “2001 Letter Agreement”).

26. Under the 2001 Letter Agreement, GSR was entitled to purchase rounds of golf for resale to resort guests under certain terms, including but not limited to:

- a. GSR was entitled to purchase 1,000 rounds of golf each calendar month from May to October on the Stonehaven and Woodhaven golf courses for resale to resort guests during the first five years of the agreement;
- b. beginning January 1, 2004, GSR would tender a green fee of \$18.00 per round of golf to GSVPOA subject to an annual adjustment based on the CPI for Urban Wage Earners not to exceed five percent and
- c. all amounts due to GSVPOA to be paid by the tenth day of the following month.

27. GSVPOA constructed the Woodhaven and Stonehaven golf courses within the common areas of GSV between 2001 and 2009.

28. Under the Club Lease Agreement dated May 4, 2001 (the "Club Lease Agreement"), GSR was to have charged GSVPOA members for golf carts the lesser of (1) GSR's then-current rate for golf carts used by GSR's Club Members and Resort Guests; or (2) \$15 a person a round, with such rate to increase (but not decrease) annually each January 1, beginning January 1, 2004, based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

29. In contemplation of the opening of Stonehaven, on or about April 22, 2003, Cooper Land, GSVPOA and GSR entered into a letter agreement supplementing the 2001 Letter Agreement (the "2003 Letter Agreement").

30. Among other terms, the 2003 Letter Agreement provided that:

All individuals playing golf on the Stonehaven Course will check-in at the GSR Golf Shop. GSR will collect any amounts due GSVPOA from Stonehaven Customers, with GSR acting as agent for GSVPOA. GSR will provide GSVPOA with a daily accounting with any amounts due GSVPOA by the 10th day following each month. Such accounting will include the number of rounds played each day by category, including applicable sales taxes collected. GSR will provide and pay for all personnel, equipment, supplies, etc. to provide such services for GSVPOA. GSVPOA will pay GSR \$1,750.00 per month, plus state sales

tax, for the months of May, June, July, August, September and October and \$1,000.00 per month, plus state sales tax, for the months of November, December, January, February, March and April. Such monthly payments to begin at the opening of Stonehaven and shall be paid even if GSR Golf Shop is closed due to weather. Such monthly payments will increase or decrease each July 1, beginning July 1, 2004 based on the lesser of; a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers; United States City Average, All Items, based on June indexes; or b) five (5) percent.

GSVPOA will provide and pay for all maintenance cost for Stonehaven including wages, taxes, and benefits for golf course maintenance employees, starters and rangers. GSR will provide Golf Shop employees including golf cart attendants and pay all wages, taxes and benefits for said employees. Sales and use taxes collected and paid to GSVPOA, on behalf of Stonehaven will be remitted by GSVPOA. Real Estate and personal property taxes related to Stonehaven will be paid by GSVPOA. GSR will remit sales taxes related to "GSR Resort Guests". GSVPOA will pay for Stonehaven scorecards and incidental expenses related to Stonehaven.

Representatives of GSVPOA, CLDI and GSR will meet monthly, or more frequently upon reasonable request by any of the parties to review and discuss the operation of the Stonehaven and Cobb golf courses, including hours of operation, to exchange information on planned temporary closing dates of either course for maintenance, and generally to provide for efficient operation of both courses to insure that golfers on both courses are provided a good golf experience.

The term of this agreement with respect to the agreements herein shall be one (1) year. This agreement will automatically renew unless either party gives written notification 60 days in advance of expiration.

2003 Letter Agreement, Paragraphs 6, 11, 14 and 15.

31. In 2010, Cooper Land purported to assign or convey its interests in the GSV properties that were subject to the 2001 Declaration and all of its rights as the Declarant to Justice Holdings, LLC ("Justice Holdings").

32. Thereafter, Justice Holdings, purportedly as the successor declarant of GSV, exclusively appointed a Board of Directors to GSVPOA ("Declarant Board of Directors").

The Declarant Board of Directors of GSVPOA

33. Defendant Coppoolse obtained an appointment to the Board of Directors. He was a member of the Board of Directors of GSVPOA (“Declarant Board of Directors”) from 2010 to April 30, 2019 as determined by Justice Holdings or its principals/members/managers and maintained authority as a member of the Declarant Board of Directors under W. Va. Code §36B-3-301 *et seq.* as well as the 2001 Declaration for GSV and its Bylaws.

34. Upon information and belief, Defendant Coppoolse is also a minority member in GSR and is the General Manager of GSR.

35. Defendant Coppoolse is the majority owner and chief executive officer of Defendant EMCO.

36. Defendant James Terry Miller (“Miller”) was a member of the Declarant Board of Directors from 2010 to April 30, 2019.

37. Defendant Miller held his position on the Declarant Board of Directors as determined by Justice Holdings or its principals/members/managers or Defendant Coppoolse.

38. Defendant R. Elaine Butler (“Butler”) was a member of the Declarant Board of Directors from 2010 until her retirement on December 21, 2018, while also serving as the controller or chief financial officer for Defendant EMCO under the supervision and direction of Defendants EMCO and Coppoolse.

39. Upon information and belief, Defendant Butler was simultaneously secretary and chief financial officer of Justice Holdings, LLC, secretary of GSR, LLC and a senior manager of Defendant EMCO.

40. Defendants Coppoolse, Miller and Butler are collectively referred to as the “Declarant Board of Directors” in this Complaint.

41. At all times relevant and material to the matters complained of herein, Defendants Coppoolse, Miller and Butler in their capacity as members of the Declarant Board of Directors had a fiduciary duty in accordance with the GSV Declarations and Bylaws and West Virginia law to act in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of GSVPOA and to act in a fiduciary capacity with regard to the best interest of the property owners of GSV and members of GSVPOA.

42. At all times relevant and material to the matters complained of herein, Defendants Coppoolse, Miller and Butler, in their capacity as members of the Declarant Board of Directors, owed fiduciary duties to all GSV property owners and Members of the GSVPOA under W. Va. Code§ 36B-3-103 as well as the 2001 Declaration and Bylaws.

Actions of the Declarant Board of Directors

43. Defendant Coppoolse exerted extraordinary power and control over all of the affairs, assets and operations of GSVPOA until the first independent board of directors of GSVPOA took control of the organization on May 1, 2019.

44. Defendant Miller failed to exercise independent judgment on behalf of GSVPOA and submitted to the will and direction of Defendant Coppoolse directly contrary and in opposition to the interests of GSVPOA.

45. Defendant Butler failed to exercise independent judgment on behalf of GSVPOA and submitted to the will and direction of Defendant Coppoolse directly contrary and in opposition to the interests of GSVPOA.

46. Defendant Coppoolse directed that GSVPOA contract with Defendant EMCO to serve as the managing agent of GSVPOA with no input from or review by any person independent of Defendant EMCO.

47. Defendant Coppoolse dominated the Declarant Board of Directors, and routinely and pervasively deployed the resources and assets of GSVPOA to the use of Defendant EMCO or others for no adequate consideration.

48. On or about March 1, 2010, the Declarant Board of Directors entered into a Lease Agreement with Defendant EMCO Glade Springs Hospitality, LLC ("EMCO") with regard to a pro shop and food and beverage facilities located inside the Clubhouse for the Woodhaven Golf Course (the "2010 Lease Agreement").

49. Under the 2010 Lease Agreement, Defendant EMCO was required to provide written reports to GSVPOA of the gross and net revenues from the operations along with the payment due GSVPOA by the tenth day of the month following each month of operations. Defendant EMCO was required to pay rent under the 2010 Lease Agreement in a sum equal to five (5%) percent of all gross revenues from the premises, together with catering, food and beverage sales from any golf carts operated on the Woodhaven Golf Course by Defendant EMCO.

50. Defendant EMCO repeatedly failed to provide a full accounting to GSVPOA under the terms of the 2010 Lease Agreement.

51. GSVPOA has repeatedly requested a full accounting from Defendant EMCO under the 2010 Lease Agreement; however, Defendant EMCO refuses to provide a full accounting.

52. Defendant EMCO failed to remit all amounts due and owing under the 2010 Lease Agreement and is currently in arrears to GSVPOA.

53. GSVPOA has not been able to determine the full amount of Defendant EMCO's arrearage under the 2010 Lease Agreement because of Defendant EMCO's failure and refusal to provide a full accounting to GSVPOA.

54. On or about March 1, 2010, the Declarant Board of Directors also entered into a Letter Agreement with Defendant EMCO setting forth additional understandings of the parties and to implement the 2001 Letter Agreement and the 2003 Letter Agreement with regard to both the management of Woodhaven and Stonehaven (the "2010 Letter Agreement").

55. Under the 2010 Letter Agreement, GSR was entitled to purchase rounds of golf for its guests at \$33.58 per round beginning on January 18, 2010. Such round fee to be adjusted annually based on the May 4, 2001 Letter Agreement.

56. The 2010 Letter Agreement provided that Defendant EMCO personnel shall independently manage the tee-time reservations for Stonehaven and Woodhaven according to the parameters set forth therein. Such management of the tee-time shall not interfere with regular member play.

57. Under the 2010 Letter Agreement, Defendant EMCO was to collect any amounts due to GSVPOA from Woodhaven customers, with Defendant EMCO acting as an agent. Defendant EMCO was required to provide a daily accounting and payment of all sums due to GSVPOA by the tenth day of the following month minus a two and one-half (2 1/2 %) percent administration fee.

58. The 2010 Letter Agreement also provided, among other terms, that as consideration for the additional tee-time flexibility, GSVPOA agreed to pay one half of the monthly fee as outlined in the 2003 Letter Agreement.

59. Defendant EMCO has not fully accounted to GSVPOA under the 2010 Letter Agreement.

60. GSVPOA has repeatedly requested the accounting, but Defendant EMCO has refused to provide a full accounting under the 2010 Letter Agreement.

61. Defendant EMCO has not remitted all funds due to GSVPOA and is currently in arrears under the 2010 Letter Agreement.

62. GSVPOA is unable to determine the full amount of the Defendant EMCO's arrearage under the 2010 Letter Agreement because it has not received a full accounting from Defendant EMCO

63. On or about March 1, 2011, the Declarant Board of Directors of GSVPOA entered into a Letter Agreement with GSR, LLC regarding GSVPOA Golf Courses (the 2011 Golf Course Agreement").

64. The 2011 Golf Course Agreement purported to replace the following and purported to declare such agreements to be null and void:

- a. The 2001 Letter Agreement;
- b. The 2003 Letter Agreement; and
- c. The 2010 Letter Agreement.

65. Under the 2011 Golf Course Agreement, GSR was entitled to purchase for its hotel guests rounds of golf from GSVPOA for \$22.00 a person subject to annual adjustment as

set forth therein. All amounts due and owing GSVPOA for such golf rounds were to be paid by the 30th of the month following the purchase.

66. Without consideration to GSVPOA, the 2011 Golf Course Agreement also purported to reinstate to GSR the base monthly management fee paid by GSVPOA.

The Member Elected Board of Directors of GSVPOA

67. In 2018, a group of GSV property owners (*i.e.*, members of the GSVPOA) challenged the right of the Declarant to solely and exclusively appoint the Board of Directors as a direct violation of UCIOA and other West Virginia law.

68. Defendant EMCO openly and actively advocated to retain the Declarant Board of Directors despite the prohibitions against the Declarant's total control of the executive board of directors set forth in W. Va. Code §§ 36B-3-103(d), (e) and (f).

69. Ultimately, GSVPOA's first election by the Members for an independent Board of Directors was held in April 2019, when members of the Declarant Board of Directors were ousted effective May 1, 2019.

70. GSV members David McClure, Cindy Fernald and Allen Teinert were duly elected to the Board of Directors of GSVPOA (the "Elected Board of Directors") and assumed office on or about May 1, 2019. As of the date of this complaint, Mr. McClure, Ms. Fernald and Mr. Teinert comprise the entire Elected Board of Directors.

71. On May 24, 2019, David McClure in his capacity as President of GSVPOA, upon a vote of the Elected Board of Directors, terminated the 2011 Golf Course Agreement under the W. Va. Code § 36B-3-105.

Count I – Accounting

72. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 71 as if set forth fully in Count I of this Complaint.

73. The Elected Board of Directors has requested a full accounting under all agreements or acting as manager of GSVPOA from Defendants EMCO and GSR, but has not received a full accounting.

74. As set forth above, under the 2003 Agreement, Defendant EMCO also is required to “provide GSVPOA with a daily accounting with any amounts due GSVPOA by the tenth day following each month.” The accounting must include the number of rounds played each day by category, including applicable sales taxes collected.

75. Defendant EMCO has not provided the daily accounting to GSVPOA by the tenth day of the following month as required by the 2003 Agreement. In fact, for many years no accounting was given to GSVPOA.

76. Defendant EMCO’s failure and refusal to provide accountings to GSVPOA constitutes a breach of the 2003 Agreement.

77. GSVPOA is entitled to a full accounting from Defendant EMCO under the 2003 Agreement.

78. GSVPOA has been damaged by the aforesaid breaches of the 2003 Agreement.

79. As further set forth above, under the 2010 Letter Agreement Defendant EMCO is also required to provide an accounting to GSVPOA.

80. For many years, EMCO has not provided a full accounting to GSVPOA under the 2010 Letter Agreement.

81. EMCO's failure and refusal to provide a full accounting to GSVPOA under the 2010 Letter Agreement constitutes a breach of the 2010 Letter Agreement.

82. GSVPOA has been damaged by the aforesaid breaches of the 2010 Letter Agreement.

83. GSVPOA is entitled to a full accounting from EMCO under the 2010 Letter Agreement.

Count II – Breach of Contract

84. Plaintiff incorporates by this reference all of the averments set forth in the previous paragraphs 1 through 83 as if set forth fully in Count II of this Complaint.

85. EMCO was continually late in remitting payments due and owing to GSVPOA under both the 2010 Lease Agreement and the 2010 Letter Agreement.

86. EMCO is currently in arrears to GSVPOA under the 2003 Lease Agreement.

87. EMCO is currently in arrears to GSVPOA on the round fees due and owing to GSVPOA under the 2010 Letter Agreement.

88. EMCO's failure to tender full and timely payments to GSVPOA under both the 2010 Lease Agreement and the 2010 Letter Agreement constitute breaches of those agreements.

Count III – Breach of Fiduciary Duty against the Declarant Board of Directors

89. Plaintiff incorporate by this reference all of the averments set forth in the previous paragraphs 1 through 88 as if set forth fully in Count III of this Complaint.

90. The Declarant Board of Directors breached its fiduciary duties as it permitted GSVPOA's assessment receivables to increase from \$177,000.00 as of December 31, 2010, to approximately \$1,500,000.00 as of December 31, 2018.

91. Defendant EMCO breached its contractual and other duties to GSVPOA by failing to manage GSVPOA's assessment receivables.

92. Cooper Land and the Declarant Board of Directors entered into a so-called 2001 interest-free Loan Agreement and Promissory Note⁷ wherein Cooper Land as the Declarant required GSVPOA as borrower to be liable and "responsible for funding the construction and installation of the water, waste water and electric utilities to serve" GSV, contractual obligations for which GSVPOA, all for no adequate consideration or for which GSVPOA had the financial capacity to repay.

- a. At Glade's annual Association meeting on May 22, 2018, Defendant Coppoolse told Plaintiff and other GSV lot owners that the 2001 interest-free Loan Agreement/Note indebtedness by GSVPOA to Justice Holdings approximated \$14 million, a false statement. Defendant Coppoolse also claimed the alleged \$14 million debt was disclosed in documents furnished to all GSV lot owners, a false statement. The 2001 GSV Declaration provides Declarant, is responsible for the construction of public and private streets in Glade and the cost of maintenance "shall be paid from assessments". Declaration, Article VII, Section 1 and Article VI, Section 4.
- b. By the specific terms of the 2001 interest free Loan Agreement/Note – the debt now alleged by Defendant Coppoolse to be \$14 million – provided that loan moneys were to be used only to fund "water, waste water and electric utilities" in GSV and did not fund clearing for roads, road construction, bridge construction, gas and telephone utilities, water(s)/pump(s) from Chatham Lake to golf course(s) and irrigation system(s) and related expenditures.
- c. By Assignment and Assumption of Utility Loan Agreement dated October 20, 2010, Justice Holdings assumed Cooper's "rights and obligation of every kind in (regard to the 2001 Loan Agreement/Note)". . . "to fund construction of the water, waste water and electric utilities to serve Glade Springs Village."

⁷ Reference to the purported Loan Agreement and Promissory Note and amendments thereto is not intended to imply that the Elected Board of Directors of the GSVPOA considers these documents legally valid and enforceable contracts. To the contrary, the GSVPOA specifically reserves its right to challenge the validity and enforceability of the purported Loan Agreement and Promissory Note and amendments thereto.

- d. GSVPOA, under the direction and command of the Declarant Board of Directors, authorized the execution of the Third, Fourth, Fifth and Sixth Amendments to the 2001 interest free Loan Agreement/Note to Justice Holdings, with certain of amendments to be signed by Defendant Coppoolse as Director of GSVPOA, by Defendant Miller, as Manager of Justice Holdings and by Defendant Coppoolse as Director of GSVPOA.
- e. All members of the Declarant Board of Directors authorized each of the Third – dated June 30, 2011; the Fourth – dated June 30, 2012; the Fifth – dated June 30, 2013; and Sixth – dated June 30, 2018, Amendments to the 2001 interest-free Loan Agreement/Note, which specifically provided that the loan proceeds were to be used only to fund “water, waste water and electric utilities” in GSV and did not include any other development costs.
- f. Since 2010, the amounts due on the principal of the 2001 interest-free Loan Agreement/Note have been paid down and reduced, or should have been, resulting in enrichment of Justice Holdings to the detriment of Plaintiff.
- g. Meanwhile, Justice Holdings has been receiving TIF funding arising from the ad valorem taxes from GSV to repay the costs of constructing the very same utility lines referenced above. Indeed, the TIF funding paid for, and continues to pay for, “water, sewer (waste water) and electric, gas and telephone”.
- h. Upon information and belief, when added to TIF claims for reimbursement, the total monetary benefits to Cooper and Justice Holdings for certain select utility work in GSV exceeds \$30 million, or approximately \$19,000.00 for every TIF-funded GSV lot completed.
- i. Defendants EMCO, Coppoolse, Miller and Butler knew on May 22, 2018 and have known since 2010 that Justice Holdings was receiving Glade TIF moneys paid by Plaintiff and the Association lot owners by their *ad valorem* real estate taxes, for the installation of certain specified utilities in GSV, while at the same time Defendant EMCO was seeking on behalf of Justice Holdings to recover and did recover from Plaintiff and GSV lot owner moneys by the 2001 interest-free Loan Agreements/Note, *i.e.*, \$14 million, thus seeking to be paid and being partially paid far in excess of the cost of utility installation, all with the intent to defraud Plaintiff and GSVPOA property owners and taxpayers of millions of dollars.
- j. In an effort to cover up the scheme to deceive and defraud Plaintiff and GSV property owners to the direct and indirect financial gain of Defendant EMCO by seeking to be paid twice for the same utilities, *i.e.*

“water, wastewater (sewer) and electric”, Defendant Coppoolse, a member of the Declarant Board of Directors, on May 22, 2018, at the Association annual meeting, intentionally and falsely stated to Plaintiff, its members and others that the money from the claimed \$14 million debt owed to Justice Holdings by GSVPOA by the 2001 interest-free Loan Agreement/Note “was used to build all the roads and to build the infrastructure” in GSV. In fact, Defendant Coppoolse, knew that statement to be false, *i.e.* the specific terms of the 2001 interest free Loan Agreement/Note was to fund only “water, waste water and electric utilities” in GSV. Defendant Coppoolse failed to tell GSV that Justice Holdings had been paid, and was being paid TIF funds for the same utility work. Defendant Coppoolse failed to tell GSVPOA and its Members that on March 1, 2008, under the First Amendment to Loan Agreement the revolving note line of credit was increased from \$8 million to \$15 million, when Cooper had just submitted expenses for TIF reimbursement in the amount of \$6,781,577.09 as of June 30, 2007. The Declarant seeks to be paid by GSV property owners for work the TIF has already paid to Cooper Land or Justice Holdings.

- k. Further, Defendant Coppoolse intended to fraudulently mislead GSVPOA and all GSV property owners by stating that \$14 million “was used to build all the roads and to build the infrastructure” in GSV so GSV members and lot owners would not question the legitimacy of the claimed \$14 million debt from GSVPOA, all to the direct and indirect financial gain of Defendant EMCO. Further, Defendant Coppoolse, as a director and officer of the Declarant Board of Directors signed two versions of the Sixth Amendment to Loan Agreement, both dated June 30, 2018, wherein both specifically stated the 2001 interest-free Loan Agreement/Note was used “for funding the construction and installation of the water, waste water and electric utilities to serve the Village of Glade Springs”, in direct contravention of Defendant Coppoolse’s statements on May 22, 2018, to the GSV lot owners. The two Sixth Amendment to Loan Agreement documents both were signed by Defendant Coppoolse, as a member of the Declarant Board of Directors and by Defendant Miller, Manager of Justice Holdings, each with authority to act on behalf of GSVPOA and Justice Holdings and each with the consent and approval of their respective boards of directors. Further, Defendant Coppoolse caused his intentionally false statement, intended to deceive and defraud Plaintiff and all GSVPOA property owners, to be recorded, filmed and placed on the Association website, all designed to reach all GSV lot owners both within and outside of West Virginia.

93. As set forth above, the Declarant Board of Directors also entered into the 2011 Letter that reduced the price of each golf round arranged for and managed by Defendant EMCO due to GSVPOA from \$33.58 to \$22.00, to no benefit to GSVPOA failed to comply with the 2010 Agreement that overcharged GSVPOA members for golf cart rental for several years.

94. The actions of the Declarant Board of Directors described above constitute a breach of the fiduciary duties the individual board members owed to GSVPOA members and lot owners.

95. As set forth above, the Declarant Board of Directors has not complied with the Club Lease Agreement in the amount to charge GSVPOA members and has in fact overcharged GSVPOA members for cart rentals for several years.

96. As a direct result of the Declarant Board of Directors' breaches of their statutory fiduciary duties GSVPOA was and continues to be deprived of substantial and material moneys that it could have and should have used to benefit GSVPOA and to maintain common elements.

WHEREFORE, Plaintiff, Glade Springs Village Property Owners Association, Inc., prays that this Honorable Court award and give the following relief and remedies:

1. Entry of an order appointing an expert special commissioner in accounting at the sole expense of Defendants EMCO, Coppoolse, Miller and Butler to audit all books and records Defendant EMCO, of GSVPOA, of the TIF, and of WV/Commission to determine the following:

- a. What moneys if any, are owed to GSVPOA by Defendant EMCO or others under the 2010 Lease Agreement and the 2010 Letter Agreement;
- b. The accuracy and validity of all Glade TIF expenditures submitted by Defendant EMCO to the State of West Virginia or the Raleigh County Commission for the specific GSV utilities;
- c. Whether Defendants EMCO, Coppoolse, Miller and Butler acted or failed

to act in the best interests of GSVPOA and its Members, they breached their fiduciary duties to GSVPOA and its Members, and they property discharged or failed to properly discharge their duties as fiduciaries to GSVPOA and its Members under the Declaration, the Bylaws, UCIOA and other West Virginia law;

- d. Depending on the audit results, refer the results of the audit to whichever West Virginia or federal agency this Honorable Court deems appropriate for review; and
- e. Depending on the audit results, award such compensatory and punitive damages and other relief against Defendants named in this Complaint as is appropriate for Defendants' willful, wanton, intentional and fraudulent acts; and
- f. Award Plaintiff reasonable attorneys' fees together with costs on its behalf expended;

2. Entry of an order assessing costs for the services of an court-appointed examiner/Certified Public Accountant as against all Defendants as this Honorable Court deems just and proper;

3. Compensatory damages;

4. Entry of an order awarding unto Plaintiff its costs in litigation and attorneys' fees under the Declaration and Bylaws of the Association, UCIOA and other provisions of West Virginia law;

5. Entry of an order assessing pre-judgment and post-judgment interest as applicable in accordance with West Virginia law with regard to any funds deemed to be subject to disgorgement by Defendants until such time as said funds are repaid to the Association;

6. Entry of order giving Plaintiff immediate and complete access and control of its real and personal property assets including the Stonehaven and Woodhaven golf courses;

7. To the extent this Honorable Court finds that there has been a breach of fiduciary

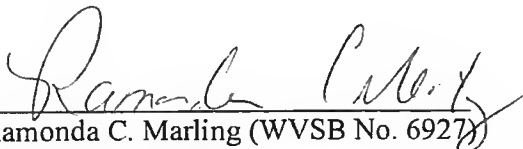
duty by the Declarant Board of Directors, conversion of assets of the GSVPOA by or for the benefit of any defendant, or that there has been violation of West Virginia statutory or regulatory authority, including but not limited to, UCIOA and any and all codes and regulations affecting the TIF, assessment of punitive damages as against Defendants as deemed appropriate by this Honorable Court; and

8. Granting unto Plaintiff such further relief as it deems just and proper.

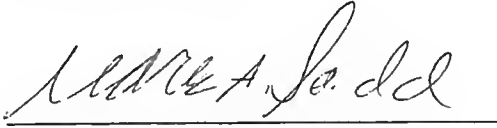
Plaintiff demands a trial by jury as to all claims so triable.

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

By Counsel



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